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22 FACEBOOK, INC.

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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

19 REVEAL CHAT HOLDCO, LLC, a Delaware  
20 limited liability company, USA TECHNOLOGY  
21 AND MANAGEMENT SERVICES, INC. (d/b/a  
22 Lenddo USA), a Delaware corporation, CIR.CL,  
23 INC., a dissolved Delaware corporation, and  
24 BEEHIVE BIOMETRIC, INC., a dissolved  
25 Delaware corporation,

26 Plaintiffs,

27 v.

28 FACEBOOK, INC., a Delaware corporation,

Defendant.

Case No. 5:20-CV-00363-BLF

**DEFENDANT FACEBOOK INC.'S  
OPPOSITION TO PLAINTIFFS'  
ADMINISTRATIVE MOTION TO  
FILE POST-HEARING LETTER  
BRIEF**

1 Plaintiffs’ administrative motion to file a post-hearing letter brief “to provide additional  
2 authority and context” should be denied. The motion is procedurally improper, the proposed  
3 letter brief contains no new authority, and the proposed letter brief is of no assistance to the  
4 Court.

5 This Court’s Local Rules “are structured to deter an endless cycle of filings and counter-  
6 filings while preserving the Court’s ability to render a decision that is fully-informed by any  
7 particularly germane legal authority that may emerge.” *Michael Taylor Designs Inc. v. Travelers*  
8 *Property Cas. Co. of America*, 761 F. Supp. 2d 904, 909 (N.D. Cal. 2011). Thus, it is  
9 “permissible” under Rule 7-11 “for a party to seek leave to submit additional, *newly-released*,  
10 authorities after a matter has been heard.” *Id.* (emphasis added). No provision of the Local  
11 Rules, however, allows what plaintiffs seek to do here: submit a brief with pre-existing, non-  
12 controlling, and cumulative case law on a fully-briefed and argued question of law. Indeed, even  
13 with regard to newly-released authority, courts are clear that leave to file a post-hearing  
14 “statement of recent decision” should be granted “sparingly.” *Id.* Plaintiffs’ motion, which does  
15 not even attempt to explain why the relevant criteria for leave are met, is a poor candidate for an  
16 exception to this rule. This is particularly true since the cases cited in plaintiffs’ proposed brief,  
17 all of which were published well before plaintiffs filed their opposition—and many of which  
18 were already cited in the opposition—are wholly “cumulative of the cases that have already been  
19 submitted.” *Id.*

20 Next, while plaintiffs purport to offer only additional authority on their fraudulent  
21 concealment theory, the proposed letter brief in fact also attempts to rebut Facebook’s argument  
22 in its reply brief that a 2015 *Wall Street Journal* article demonstrates that the plaintiffs had  
23 constructive notice of the challenged “whitelist agreements.” Mot., Ex. A at 2. Contrary to  
24 plaintiffs’ contention, the fact that the CEO of plaintiff Reveal Chat is quoted in the article lends  
25 further support to *Facebook’s* argument. But in any event, plaintiffs’ argument is not  
26 permissible under the Local Rules. Civil Local Rule 7-3(d)(1) requires any objections to  
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1 arguments made in a reply to be served “within 7 days after the reply is filed.” Plaintiffs have  
2 missed that deadline by more than a month, without explanation.

3 Finally, plaintiffs proposed letter brief does not, as plaintiffs claim, “aid the court in its  
4 consideration of the issue of fraudulent concealment.” Mot. at 2. To begin, none of the cases  
5 cited by plaintiffs are on point. Plaintiffs fail to realize that they are challenging public acts and  
6 at best have alleged that Facebook concealed the *intent* motivating it to undertake those acts.  
7 Once the acts became public, however, there was no more concealment, let alone a fraudulent  
8 concealment. Plaintiffs do not—and cannot—address this fundamental flaw in their theory. And  
9 even taking plaintiffs’ theory at face value, plaintiffs have no answer for the fact that  
10 “affirmative silence” is actionable fraudulent concealment only where there is a duty to disclose.  
11 *Conmar Corp. v. Mitsui & Co. (U.S.A.)*, 858 F.2d 499, 505 (9th Cir. 1988). Plaintiffs allege no  
12 such duty and, even now, do not argue otherwise. Silence alone does not give rise to such a  
13 duty. *Id.*

## 14 CONCLUSION

15 This Court should deny plaintiffs’ administrative motion for leave to file a letter brief to  
16 “provide additional authority and context to aid the Court.”  
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1 Dated: June 29, 2020

Respectfully submitted,

2  
3 By: /s/ Sonal N. Mehta

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